

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

C.P. ASSOCIATES, INC.

and

CASE 34-CA-8123

**INTERNATIONAL UNION OF BRICKLAYERS &
ALLIED CRAFTSMEN, AFL-CIO, LOCAL 1**

Jennifer F. Dease, Esq., Counsel for the
General Counsel

SUPPLEMENTAL DECISION

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this backpay case in Hartford, Connecticut on June 13, 2005.

The Compliance Specification and Notice of Hearing was issued by the Regional Director of Region 34, on May 5, 2005. It was served on the Respondent at its last known address by certified and regular mail.¹ The envelope for the certified delivery was returned by the Postal Service to the Region with the statement that it was unclaimed. The fact that the certified mail was not claimed does not constitute a defense that the Compliance Specification was not served. *Michigan Expediting Service*, 282 NLRB 210 fn. 6, (1986). As to the service of the Specification by regular mail, the Postal Service did not return the envelope and this by itself indicates that it was, in fact, served. *Lite Flight Inc.*, 285 NLRB 649, 650 (1987). Accordingly, I conclude that the Compliance Specification was properly served on the Respondent.²

The Respondent did not file an Answer to the Specification and therefore all of the allegations are deemed to be admitted by it to be true. Accordingly, I hereby make the following findings and conclusions.

On September 28, 2001, the Board, at 336 NLRB 167, directed the Respondent to make whole Timothy Palmieri, Theodore May, Todd Dexter and Judith Livesey for any loss of earnings resulting from unfair labor practices. This Decision was enforced on May 5, 2004 by

¹ Among the documents introduced into evidence by the General Counsel was a letter signed by Kevin Caira, with a letter head showing that the address of Respondent, CP Associates Inc., is 76 Silver Lake Avenue, Newton, Massachusetts, 02458.

² I also note that Counsel for the General Counsel represented on the record that she telephoned Mr. Caira and notified him that the Compliance Specification had been mailed to him and that the matter had been set for a hearing. She stated that Mr. Caira said that he would not respond and would not appear at the hearing.

the United States Court of Appeals for the Second Circuit in Judgment No. 04-1479. A Backpay hearing was thereafter scheduled by the Director of Region 34.

On December 3, 2002, the Respondent, the Union and Region 34 entered into a
 5 “Stipulation Consenting to Amount of Backpay and Schedule for Payment.”

Pursuant to the December 3, 2002 Stipulation, the Respondent agreed to make payments to the discriminatees in the total amount of \$18,000 to be distributed as follows:

10 Timothy Palmieri	\$2,500
Todd Dexter	\$2,500
Theodore Mayo	\$4,000
Judith Livesey	\$9,000

15 The Stipulation provided that the aforesaid payments were to be made by monthly installments of \$3,000 each, commencing on December 15, 2002 and ending on May 15, 2003.

20 The Stipulation further provided that in the event that the Respondent failed to make the payments, this would result in the full unpaid amount being immediately due and payable with additional interest due on the entire unpaid balance from the date of the default until full payment is received. At paragraph 9 of the Stipulation, the Respondent waived any right to a hearing or other legal proceedings to dispute the accuracy of the backpay amounts set forth in the Stipulation.

25 The Respondent paid \$6,000 of the \$18,000 and on May 6, 2003, the Respondent, the Union and the Region entered into an “Amendment to Stipulation Consenting to Amount of Backpay and Schedule of Payment.” Pursuant to this amendment to the original “Stipulation,” the Respondent agreed to pay the remaining \$12,000 in four consecutive monthly installments of \$3,000 beginning on May 15, 2003 and ending on August 15, 2003.

30 The Respondent made three payments of \$3,000 but failed to make the final installment of \$3,000 that was due on August 15, 2003. Notwithstanding requests by the Region that it make the final installment, the Respondent has failed and refused to do so.

35 Based on the above, it is concluded that the Respondent has breached and failed to comply with the “Stipulation Consenting to Amount of Backpay and Schedule for Payment” and the amendment thereto.

40 On these findings of fact and conclusions of law and on the entire record, I issue the following conclusions and recommended³

45 ³ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

5 C.P. Associates Inc., shall make payment to the following employees in the amounts set forth opposite their names, plus interest to be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173, (1987), minus tax withholding required by Federal and State law:

Timothy Palmieri	\$437.50
Todd Dexter	\$437.50
10 Theodore Mayo	\$812.50
Judith Livesey	\$1,312.50

Dated: Washington, D.C.

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Raymond P. Green
Administrative Law Judge